

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BILLY D. JONES)	
Claimant)	
VS.)	
)	
PERRY AND SON CONSTRUCTION)	Docket No. 183,086
Respondent)	
AND)	
)	
CIGNA)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

On September 4, 1996, the Application of the claimant for review by the Workers Compensation Appeals Board of an Award entered by Administrative Law Judge Shannon S. Krysl on March 29, 1996, came on for oral argument.

APPEARANCES

Claimant appeared by and through his attorney, Stephen J. Jones of Wichita, Kansas. Respondent and its insurance carrier appeared by and through their attorney, Douglas C. Hobbs of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Edward D. Heath, Jr., of Wichita, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The record and stipulations as specifically set forth in the Award of the Administrative Law Judge are herein adopted by the Appeals Board.

ISSUES

- (1) Whether claimant sustained accidental injury arising out of and in the course of his employment with respondent.
- (2) The nature and extent of claimant's injury and/or disability including whether or not claimant's left knee injury and TMJ were caused or aggravated by the accident and whether claimant is entitled to a work disability.
- (3) Claimant's entitlement to have outstanding medical bills with Dr. Artz and Dr. Duncan paid as part of the Award.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein and in addition the stipulations of the parties, the Appeals Board makes the following findings of fact and conclusions of law.

The Appeals Board finds that the Award of the Administrative Law Judge fully sets forth the findings of fact which are accurate and appropriate and the Appeals Board adopts said findings of fact as its own as if specifically set forth herein.

The Appeals Board finds claimant's accident arose out of and in the course of his employment on March 29, 1993. The Award of the Administrative Law Judge fully sets out conclusions of law which are accurate and appropriate and the Appeals Board adopts the same in finding that claimant did meet with personal injury by accident to his right shoulder on March 29, 1993, and said accident did arise out of and in the course of his employment.

The Administrative Law Judge went on to deny claimant benefits regarding the left knee injury and the temporal mandibular joint problems (TMJ) finding these problems did not arise out of the same fall. The Appeals Board finds the evidence in the record is insufficient to show a causal connection between claimant's knee problems, his TMJ problems, and the injury which occurred at work on March 29, 1993. In so finding, the Appeals Board also finds that the medical bills related to the knee and TMJ are not authorized, not having stemmed from a work-related injury.

The Appeals Board finds it significant that claimant was treated by Charles D. Pence, M.D., over a period of several months, on ten different occasions, with claimant

never mentioning his left knee or TMJ problems until June 1994, approximately 14 months after claimant's accidental injury.

With regard to the claimant's entitlement to disability benefits, the Appeals Board finds the evidence sufficient to grant claimant a six percent whole body permanent partial disability. This whole body disability relates to claimant's right shoulder. The Appeals Board further denies claimant any work disability related to the shoulder, finding claimant worked for respondent for a period of time after the date of injury and, subsequent to his termination of employment, worked for Garver Rain Soft Water Conditioning earning in excess of the average weekly wage claimant was earning at the time of his accident. Claimant continued working for Garver Rain Soft Water Conditioning for several months, terminating his employment after advising Garver that he was leaving the country on business. There was no indication that claimant was prohibited by any medical restrictions from continuing his work at Garver. K.S.A. 1992 Supp. 44-510e(a) states in part:

"There shall be a presumption that the employee has no work disability if the employee engages in any work for wages comparable to the average gross weekly wage that the employee was earning at the time of the injury."

Based upon a review of the entire record, the Appeals Board finds that claimant has engaged in work for wages comparable to the average gross weekly wage claimant was earning at the time of the injury. The cessation of claimant's employment with Garver apparently occurred as a result of claimant's own actions and not as the result of any physical inability. As such, claimant has not overcome the presumption which is contained in K.S.A. 1992 Supp. 44-510e(a) and claimant is entitled only to his functional impairment for the injury suffered to his back.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Shannon S. Krysl dated March 29, 1996, should be, and is hereby modified and claimant is granted an award against the respondent, Perry and Son Construction, and its insurance carrier, CIGNA Property & Casualty Companies, and the Workers Compensation Fund for an accidental injury sustained on March 29, 1993, for a 6% permanent partial general body disability.

Claimant is entitled to 43 weeks temporary total disability compensation at the rate of \$299 per week in the amount of \$12,857.00 followed by 372 weeks permanent partial disability at the rate of \$20.00 per week totaling \$7,440 for a 6% permanent partial general body disability making a total award of \$20,297.00.

As of September 18, 1996, there would be due and owing to claimant 43 weeks temporary total disability compensation at the rate of \$299 per week in the sum of \$12,857.00 followed by 138.29 weeks permanent partial disability compensation at the rate of \$20 per week in the sum of \$2,765.80 for a total due and owing of \$15,622.80 which is ordered paid in one lump sum minus amounts previously paid. Thereafter, the remaining balance in the amount of \$4,674.20 shall be paid at the rate of \$20 per week for 233.21 weeks until fully paid or until further order of the director.

Claimant is entitled to unauthorized medical up to the statutory maximum.

Future medical for claimant's shoulder injury may be awarded upon proper application to and approval by the director.

Claimant's attorney fee contract is approved insofar as it is not in contravention to K.S.A. 44-536.

The fees necessary to defray the expense of the administration of the Workers Compensation Act are assessed against the respondent, its insurance carrier and the Kansas Workers Compensation Fund to be paid per the agreement of the parties as follows:

Barber & Associates

Transcript of preliminary hearing	\$191.50
Deposition of Tyrone D. Artz, M.D.	301.80
Deposition of Jerry D. Hardin	316.00
Deposition of Terry L. Duncan, D.D.S.	160.40

Deposition Services

Transcript of preliminary hearing	259.70
Deposition of Charles D. Pence, M.D.	220.00
Transcript of regular hearing	617.90

Court Reporting Service

Deposition of Karen C. Terrill, M.S.	Unknown
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IT IS SO ORDERED.

Dated this ____ day of October 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Stephen J. Jones, Wichita, KS
Douglas C. Hobbs, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director